

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, §
v. § Plaintiff, § NO. 15-CR-4268-JB
JOE GALLEGOS (2), §
EDWARD TROUP (3), §
LEONARD LUJAN (4), §
BILLY GARCIA (5), §
ALLEN PATTERSON (7), §
CHRISTOPHER CHAVEZ (8), §
Defendants. §

RESPONSE OF CERTAIN COUNT 1 AND 2 DEFENDANTS TO
JOINT MOTION TO SEVER DEFENDANTS CHARGED WITH OFFENSES
IN COUNTS 6 AND 7 [Doc. 807]

COME NOW, Defendants Joe Gallegos, Edward Troup, Leonard Lujan, Billy Garcia, Allen Patterson, and Christopher Chavez, by and through their attorneys, and submit this Response to the Joint Motion to Sever Defendants Charged with Offenses in Counts 6 and 7 [Doc. 807] filed by defendants Jerry Montoya, Timothy Martinez, Anthony Ray Baca, Mauricio Varela, Daniel Sanchez, Carlos Herrera and Rudy Perez. The Defendants respectfully submit the following:

In this case thirty (30) Defendants are charged by Superseding Indictment with violations of 18 U.S.C. 1959(a) and 18 U.S.C. 2 – Violent Crimes in Aid of Racketeering. [Doc.368]. Defendants Angel DeLeon, Joe Gallegos, Edward Troup, Leonard Lujan, Billy Garcia, Eugene Martinez, Allen Patterson, and Christopher Chavez are charged in Counts 1 and 2 with the murders of Frank Castillo and Rolando Garza, alleged to have occurred on March 26, 2001. [Doc. 368, pp. 9-14]. In Counts 6 and 7, defendants Jerry Montoya, Timothy Martinez, Anthony Ray Baca, Mauricio Varela,

Daniel Sanchez, Carlos Herrera and Rudy Perez are charged with conspiracy to commit murder and murder of Javier Molina alleged to have occurred on March 7, 2014. [Doc. 368, pp.20-26].

The Defendants charged in Counts 6 and 7 have moved to have those counts severed from the remaining counts alleged in the Superseding Indictment. [Doc. 807]. The Defendants charged in Counts 1 and 2 file this response to the Joint Motion to Sever Counts 6 and 7.

It appears based on the discovery produced to date, that the government's theory is that the two murders, which occurred on the same day in 2001, were orchestrated by Defendant Billy Garcia. The government's theory is that Mr. Garcia was the "shot caller" for the SNM gang for the period of time encompassing Counts 1 and 2 of the Superseding Indictment. The government asserts that Mr. Garcia, acting on orders of those higher up in the SNM, orchestrated the murder of both victims by ordering co-defendant Leonard Lujan to arrange for the murders. The government's theory is that Mr. Lujan then arranged for two teams to carry out the murders of Frank Castillo and Rolando Garza on March 26, 2001. The government alleges that the first team was comprised of Defendants Angel DeLeon, Joe Lawrence Gallegos, and Edward Troup and that the second team was comprised of Defendants Eugene Martinez, Allen Patterson, and Christopher Chavez.

It must be reiterated that this seems to be the government's theory; however, discovery has been produced which directly contradicts this theory.

For the reasons and authorities articulated in the Joint Motion to Sever Counts 6 and 7, the Counts 1 and 2 Defendants join in that motion. Importantly, and as accurately argued in the Joint Motion to Sever Counts 6 and 7, although Counts 1, 2, 6 and 7 are all alleged to have occurred within the New Mexico Department of Corrections, Counts 1 and 2 are alleged to have occurred thirteen (13) years before the events charged in Counts 6 and 7 and none of the defendants charged

in Counts 1 and 2 are charged in Counts 6 and 7. The government will perhaps argue that Counts 1 and 2 should be joined with Counts 6 and 7 because all of the Defendants charged in Counts 1, 2, 6 and 7 are alleged members of the SNM. However, discovery reveals that Counts 1 and 2 Defendants Angel DeLeon, Edward Troup, Billy Garcia, Eugene Martinez, Christopher Chavez, Allen Patterson were not even in the custody of the New Mexico Department of Corrections on March 7, 2014. Accordingly, the factor that allegedly unites the Count 1, 2, 6 and 7 defendants, *i.e.* SNM membership and participation in alleged gang activity, was not present in March of 2014.

The Counts 1 and 2 Defendants agree that joinder of Counts 1, 2, 6 and 7 will significantly complicate and lengthen any trial and that consideration of Federal Rules of Criminal Procedure 8 and 14 counsels in favor of severance. The Counts 1 and 2 Defendants adopt the arguments in the Joint Motion to Sever Counts 6 and 7 and accordingly join in the request to sever Counts 1, 2, 6, and 7. The Counts 1 and 2 Defendants reserve the right to request further severance of the remaining counts and/or Defendants and by this pleading merely assert that they specifically join in the Joint Motion to Sever Defendants Charged with Offenses in Counts 6 and 7 [Doc. 807]

Inasmuch as the government opposed the Joint Motion to Sever Counts 6 and 7 [Doc. 807, p.28], the Counts 1 and 2 Defendants assume that the government will persist in that opposition. Counsel for Eugene Martinez takes no position.

WHEREFORE, PREMISES CONSIDERED, it is respectfully requested that Counts 6 and 7 be severed from the remaining counts in the Superseding Indictment and in particular be severed from Counts 1 and 2 of the Superseding Indictment.

DATED: January 6, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2016, I caused the instant motion to be filed with the Clerk of the Court using the CM/ECF system that will serve all other parties entitled to service and notice.

s/Cori A. Harbour-Valdez
Cori A. Harbour-Valdez